

CLEC and CMRS Provider Attempts to Impose Differing Rating and Routing Points or Virtual NPA-NXX Arrangements – Sprint PCS Petition for Declaratory Ruling (CC-01-92; DA-02-1740)

- Supporters of these arrangements are proposing that the Commission allow a telephone number associated with a CLEC or CMRS carrier switch (rating point) that may be located in Oklahoma, in another state in the United States, or for that matter in a foreign country, to be virtually assigned to an ILEC local switch (routing point) in a different state or area. The ILEC would be required to allow any end user dialing the virtual number, to be routed via a third party carrier such as SWBT, Qwest, or BellSouth to the CLEC or CMRS switch location where the number actually belongs, whether that is in Oklahoma, in another state, or in a foreign country, on a local-calling, toll free basis.
- These arrangements are inappropriate because they:
 1. Where rural telephone companies such as the Oklahoma RTCs are concerned, allow interconnection at a point on another carrier's network contrary to the clear language of the federal Act requiring interconnection within the ILEC's network.
 2. Require a rural telephone company to negotiate and make arrangements with a third party to deliver traffic to the point of interconnection on another carrier's network.
 3. Are simply a **ruse to avoid legitimate retail tariffed charges for providing interexchange calling. In effect, they are uneconomic toll bypass.** They would eliminate toll service provided by IXC's under the Commission's equal access provisions and are at odds with Commission Orders
 4. **Destroy the current jurisdictional (local, intrastate, interstate and international) traffic distinctions** by inappropriately classifying intrastate toll, interstate toll and international traffic as local and thus cause incorrect intercarrier compensation (local reciprocal compensation rather than interstate or intrastate access).

5. Require that, on an uneconomic and anti-competitive basis, **ILECs transport interexchange calls (as local calls) to any location designated by the CMRS provider or CLEC for free; pay transiting access to all intermediate carriers that transport the calls; and, pay reciprocal compensation to the CMRS provider or CLEC** for the privilege of providing this free service. These lost revenues and costs, if recovered from ILEC end users, would cause the end users to inappropriately subsidize the competitive services of the CLECs and CMRS providers.

6. Are **at odds with existing network routing governed by the LERG**. The effect of this inappropriate manipulation and misuse of the LERG is to fool the LERG and LEC local switches into routing interexchange toll calls as local calls.

7. Provide an anti-competitive benefit to CMRS carriers and CLECs. They would be able to obtain free calling and actually gain compensation revenue for interexchange landline to wireless calls, while their competitors, the IXC's, must still charge toll charges to their customers for similar interexchange calls in order to recover their costs of providing their landline to landline service. Additionally, IXC toll providers would further be disadvantaged because they would no longer receive toll revenue for any interexchange virtual NPA-NXX calls. This circumstance would further disincent IXC's from serving rural LEC exchanges that have lower toll volumes than urban exchanges.

THE STATUS OF VIRTUAL NXX IN RURAL OKLAHOMA

I. Oklahoma Independent Rural Telephone Companies (RTCs) and Southwestern Bell Wireless, LLC, AT&T Wireless Services, Inc., Western Wireless Corporation and Sprint PCS (collectively, CMRS Providers) enter into arbitration proceedings before the Oklahoma Corporation Commission (OCC) regarding unresolved issues in negotiations of an interconnection agreement (Consolidated Cause No. PUD-2002-150)

- On August 9, 2002, the Oklahoma Corporation issued an Interlocutory Order adopting the Report and Recommendation of the Arbitrator, which included resolution of certain issues concerning wireless to landline calls and landline to wireless calls between the CMRS Providers and RTCs. Specifically, with regard to the virtual NXX issue, the OCC found that Western Wireless has the option of establishing local numbers in an RTC's switch without having a direct connection. The Interlocutory Order also required the parties to submit agreements in conformance with the Order.

- On September 3, 2002, RTC's filed a Motion to Set Aside the Interlocutory Order and a Motion for Rehearing. After hearing on the RTC's Motion, which included arguments that the Arbitrator's ruling regarding Western Wireless was in error, the Oklahoma Corporation Commission issued its Final Order on October 22, 2002. The Commission *en banc* considered proposed language submitted by Western Wireless and the RTC's regarding the placement of Western Wireless numbers in RTC switches. The OCC, in its Final Order, adopted the language submitted by Western Wireless in its proposed conformed Agreement which reads as follows:

“4.3.3 Land to Mobile Traffic – CMRS Provider may obtain and Telephone Company will recognize as local all numbers assigned to Telephone Company's rate center; including those which may have a designated LERG routing point that is outside the Telephone Company's rate center but within the same LATA as the rate center. This subparagraph applies whether Telephone Company and

CMRS Provider are directly or indirectly interconnected. If indirectly interconnected, Telephone Company will deliver those calls to CMRS Provider at the Southwestern Bell LATA tandem.”

- On November 1, 2002, RTCs filed a Motion to Reconsider requesting the Commission reconsider its findings in its Final Order issued October 22, 2002. Among the issues being requested for reconsideration was the finding that paragraph 4.3.3 should be included in an interconnection agreement between Western Wireless and an RTC. As of this date, the Motion to Reconsider has not been set for hearing by the Commissioners. Once an appeal is filed in the Oklahoma Supreme Court this Motion will no longer be subject to OCC jurisdiction pursuant to *Turpen v. Oklahoma Corporation Commission*, 769 P.2d 1309 (Okla. 1988).

- On November 14, 2002, Cingular filed 32 separate applications (one for each RTC), requesting approval of a proposed Interconnection Agreement between Cingular and each respective RTC. The RTCs will be filing a Statement of Position in each cause requesting the Commission reject the proposed agreement, or in the alternative implement an interim arrangement subject to true-up once the appeal of the Final Order has been reviewed and a decision rendered by the court(s).

- On November 15, 2002, AT&T Wireless filed 32 separate applications (one for each RTC), requesting approval of a proposed Interconnection Agreement between AT&T Wireless and each respective RTC. The RTCs will be filing a Statement of Position in each cause requesting the Commission reject the proposed agreement, or in the alternative implement an interim arrangement subject to true-up once the appeal of the Final Order has been reviewed and a decision rendered by the court(s).

- On November 21, 2002, the RTCs petitioned the Oklahoma Supreme Court for review of the Commission’s order, and specifically requested the Court to overturn the finding by the Commission with respect to Western Wireless’ virtual NXX request.

II. Impacts of the OCC's Ruling

- This finding by the OCC that paragraph 4.3.3 above should be included in an interconnection agreement between Western Wireless and an RTC means that Western Wireless is not required to have facilities of any kind or serve any customers within the RTC's exchange area. It also means that all of the RTC's landline end user traffic destined for these Western Wireless locally designated numbers would have to be transported by the RTC to any place in the LATA as designated by Western Wireless. That designated point will usually be an RBOC tandem where Western Wireless typically has direct interconnection facilities. It should be noted that the carrier associated with the designated point would not even be a party to the interconnection agreement.

- This provision, if allowed to remain in the interconnection agreement and become effective, has the effect of creating virtual NXX arrangements in RTC switches, and dictates how an RTC must route certain calls to wireless customers. As stated above, these arrangements are inappropriate and create lost revenue and increased costs for independent LECs, lost revenue for IXC's, inappropriate market signals for existing players and new entrants and potentially negative impacts for consumers.

III. RTC Legal Options/Strategy

- Appeal the OCC Final Order to the Oklahoma Supreme Court no later than November 21, 2002.

- Appeal the OCC Final Order to the Federal District Court, pursuant to 47 U.S.C. §252(e)(6). This action would then necessitate requesting that the Oklahoma Supreme Court stay the appeal filed there pending a ruling by the Federal District Court.

- Seek injunctive relief from the Federal District Court, requesting that it enjoin the Oklahoma Corporation Commission from allowing the virtual NXX contract provision (paragraph 4.3.3 above) to go into effect due to the potentially irreparable harm that may come to various carriers and consumers.

- Seek the assistance of the FCC in the form of preemption of state authority to decide issues regarding implementation of virtual NXX, due to the need for consistency on a nationwide basis, and due to pending FCC dockets dealing with this issue (Sprint PCS Request for Declaratory Ruling Docket and Intercarrier Compensation Docket). Pre-emption is necessary because Virtual NXX arrangements destroy the jurisdictional nature of traffic and usurps the FCC's jurisdiction over interstate and foreign traffic. Virtual NXX allows carriers to misclassify interstate traffic as intrastate local.

- Seek the assistance of the FCC in the form of official guidelines instructing state commissions on the proper role of virtual NXX arrangements in rural telephone company exchanges.